

ARTICLE V

FINANCIAL PROVISIONS

5.1. Each Party shall contribute its equitable share of the full costs of the Project, including overhead costs, administrative costs (to include the cost of JSF/ID staff travel in support of Project efforts that is approved by the Director, JSF/ID), and costs of claims, and shall receive an equitable share of the results of the Project as specified in this Agreement.

5.2. Participation by the Parties in this Project will include the following Financial Costs and Non-financial Costs.

5.2.1. The Financial Costs of the Project, which are estimated as not exceeding a Cost Ceiling of \$10M in Then Year (TY) U.S. Dollars, shall be borne by MOD. This Cost Ceiling may only be changed upon the written agreement of the Parties.

5.2.2. The Non-financial Costs of the Project shall include \$10M of DOD non-financial contributions of Project Information. This Project Information shall include JSF JIRD II and III documents, a JSF JORD document, a pertinent JSF Operational Employment/ Supportability Concept document and follow-on updates amplifying the JSF JIRD and JORD documents, and explanatory briefings of all the foregoing information.

5.3. The costs for the DOD and MOD assignment of personnel to the JSF Program Office described in paragraph 4.4. of Article IV (Management) shall be borne by the personnel's respective DOD or MOD.

5.4. The U.S. dollar shall be the reference currency for the Project, and the Project fiscal year shall be the U.S. fiscal year. Financial contributions shall be made in Then Year (TY) U.S. Dollars in accordance with the Financial Policies and Procedures Document.

5.5. The following costs shall be borne entirely by the Party incurring the costs or on whose behalf the costs are incurred:

5.5.1. Costs associated with national representation at meetings by non-JSF Program Office members.

5.5.2. Costs associated with any unique national requirements identified by a Party.

5.5.3. Any other costs not expressly stated as shared costs or any costs that are outside the scope of this Agreement.

5.6. The JSF/ID PM and the JSF/ID Italian Deputy shall be responsible for establishing arrangements between Parties on the detailed financial management procedures under which the Project shall operate. These procedures shall be detailed in the Project Financial Policies and Procedures Document and must accord with the national accounting and audit requirements of the Parties. This document shall include an estimated financial schedule for financial contributions, which shall be consistent with the funding requirements of paragraph 5.7.

5.7. The Parties recognize that it may become necessary for DOD to incur contractual or other obligations on behalf of the Parties prior to receiving MOD funds. If DOD incurs any such obligations, MOD shall pay its equitable share of such obligations and shall provide these funds in the amounts and at the times required by Contracts or other obligations. In order for DOD to meet the payment requirements under such obligations, MOD shall provide funds to DOD in advance of the times that the payments are due under the contractual or other obligations.

5.8. A Party shall promptly notify the other Party if available funds are not adequate to fulfill its obligations under this Agreement. If a Party notifies the other Party that it is terminating or reducing its funding for this Project, both Parties shall immediately consult through the EC with a view toward continuation on a modified basis.

ARTICLE VI

CONTRACTING PROVISIONS

- 6.1. The DOD shall be responsible for Contracting for this Project in accordance with U.S. Contracting laws, regulations, and procedures. The Contracting Officer is the exclusive source for providing contractual direction and instructions to Contractors.
- 6.2. The JSF Program Office shall be responsible for the coordination of activities relating to the Project, and shall cooperate with the Contracting Officer in the areas of Contract preparation, Contract negotiation, evaluation of offers, and Contract award. The JSF Program Office, including the JSF/ID Italian Deputy, shall review statements of work prior to the development of solicitations to insure that they are in accordance with this Agreement. In addition, the Contracting Officer shall keep the JSF Program Office, including the JSF/ID Italian Deputy, advised of all Contract financial arrangements that pertain to the Project.
- 6.3. The Contracting Officer shall negotiate to obtain the rights to use and disclose Project Information required by Article IX (Disclosure and Use of Project Information). The Contracting Officer shall insert into Contracts (and require its Contractors to insert in subcontracts) suitable provisions to satisfy the requirements of this Agreement, including Article IX (Disclosure and Use of Project Information), Article X (Controlled Unclassified Information), Article XII (Security) and Article XIII (Third Party Sales and Transfers and Alternative Uses). During the Contracting process, the Contracting Officer shall advise Contractors of their responsibility to immediately notify the Contracting Agency if they are subject to any license or agreement that shall restrict their freedom to disclose information or permit its use.
- 6.4. In the event the Contracting Officer is unable to secure adequate rights to use and disclose Project Information as required by Article IX (Disclosure and Use of Project Information), or is notified by Contractors or potential Contractors of any restrictions on the disclosure and use of information, the matter shall be referred to the EC for resolution.
- 6.5. The Contracting Officer shall immediately advise the JSF Program Office, including the JSF/ID Italian Deputy, of any cost, schedule, or performance problems of any Contract for the Project for which the Contracting Officer is responsible.

ARTICLE VII

WORK SHARING

7.1. The Parties recognize that the sharing of Project work between nations of the Parties is a goal of the Parties. To that end, whenever feasible, sources from each nation shall be permitted to bid on Project work on equal terms and conditions. Each Party shall encourage its industry and research and development organizations to provide competitive opportunities to sources from the other nation to participate in the work of the Project, provided that such participation does not adversely impact the Project and is consistent with high technical merit, reasonable cost, and the need to achieve the timely, economical, and efficient execution of the Project.

7.2. No requirement shall be imposed by either Party for work sharing or other industrial or commercial compensation in connection with this Agreement that is not in accordance with this Agreement.

ARTICLE VIII

PROJECT EQUIPMENT

8.1. Each Party may provide Project Equipment identified as being necessary for executing the Agreement to the other Party. Project Equipment shall remain the property of the providing Party. A list of all Project Equipment provided by one Party to the other Party shall be developed prior to such transfers and shall be maintained by the JSF/ID PM and the JSF/ID Italian Deputy.

8.2. The receiving Party shall maintain any such Project Equipment in good order, repair, and operable condition and return the items in as good condition as received, reasonable wear and tear excepted. The receiving Party shall pay the cost of damage (other than reasonable wear and tear) to or loss of such Project Equipment.

8.3. The receiving Party shall use all Project Equipment that is provided by a Party only for the purposes of carrying out this Agreement. In addition, in accordance with Article XIII (Third Party Sales and Transfers and Alternative Uses), such Project Equipment shall not be re-transferred by the receiving Party to a Third Party without the prior written consent of the providing Party.

8.4. Project Equipment provided to the other Party under this Agreement shall be returned to the providing Party prior to the termination or expiration of this Agreement.

8.5. Any Project Equipment which is jointly acquired on behalf of both Parties for use under this Agreement shall be disposed of during the Project or when the Project ceases, as determined by DOD.

ARTICLE IX

DISCLOSURE AND USE OF PROJECT INFORMATION

9.1. General

a. Both Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out this Project. The Parties intend to acquire sufficient Project Information and rights to use such information to accomplish the objectives of the Project. The nature and amount of Project Information to be acquired shall be consistent with Article II (Objectives) and Article III (Scope of Work).

b. The Project Information contributed by the DOD as part of its Non-financial Costs in accordance with paragraph 5.2.2. of Article V (Financial Provisions) shall be considered to be Project Foreground Information for the purposes of this Agreement.

9.2. Government Project Foreground Information

9.2.1. Disclosure: Project Foreground Information generated by a Party's military or civilian employees shall be disclosed without charge to both Parties.

9.2.2. Use: Each Party may use all Government Project Foreground Information without charge for Defense Purposes. The Party generating Government Project Foreground Information shall also retain its rights of use thereto. If a Party intends to use any Government Project Foreground Information in a sale or other transfer to a Third Party, however, the provisions of Article XIII (Third Party Sales and Transfers and Alternative Uses) of this Agreement shall also apply.

9.3. Government Project Background Information

9.3.1. Disclosure: Each Party, upon request, shall disclose without charge to the other Party any relevant Government Project Background Information generated by its military or civilian employees outside the scope of this Agreement, provided that:

9.3.1.1. such Project Background Information is necessary to or useful in the Project, with the Party in possession of the information determining whether it is "necessary to" or "useful in" the Project;

9.3.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

9.3.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Party.

9.3.2. Use: Government Project Background Information disclosed by one Party to the other may be used without charge by the other Party for Project Purposes only; however, the furnishing Party shall retain all its rights with respect to such Project Background Information.

9.4. Contractor Project Foreground Information

9.4.1. Disclosure: Project Foreground Information generated and delivered by Contractors shall be disclosed without charge to both Parties.

9.4.2. Use: Each Party may use without charge for Defense Purposes all Contractor Project Foreground Information. The furnishing Party shall also retain rights of use thereto in accordance with the applicable Contract(s). If a Party intends to use any Contractor Project Foreground Information in a sale or other transfer to a Third Party, the provisions of Article XIII (Third Party Sales and Transfers and Alternative Uses) of this Agreement shall also apply.

9.5. Contractor Project Background Information

9.5.1. Disclosure: Any relevant Project Background Information (including information subject to proprietary rights) generated and delivered by Contractors or other entities under Contracts awarded by a Party shall be made available to the other Party provided the following provisions are met:

9.5.1.1. such Project Background Information is necessary to or useful in the Project, with the Party in possession of the information determining whether it is "necessary to" or "useful in" the Project;

9.5.1.2. such Project Background Information may be made available without incurring liability to holders of proprietary rights; and

9.5.1.3. disclosure is consistent with national disclosure policies and regulations of the furnishing Party.

9.5.2. Use: Project Background Information furnished by one Party's Contractors and disclosed to the other Party may be used without charge by the other Party for Project Purposes only, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Party shall retain all its rights with respect to such Project Background Information.

9.6. Proprietary Project Information

9.6.1. All Project Information subject to proprietary interests shall be identified and marked, and it shall be handled as Controlled Unclassified Information.

9.6.2. The provisions of the NATO Agreement on the Communication of Technical Information for Defence Purposes, done at Brussels on 19 October 1970, and the Implementing Procedures for the NATO Agreement on the Communication of Technical Information for Defence Purposes, approved by the North Atlantic Council on 1 January 1971, shall apply to proprietary Project Information related to this Agreement.

9.7. Patents

9.7.1. Where a Party owns title to a Project Invention, or has the right to receive title to a Project Invention, that Party shall consult with the other Party regarding the filing of a Patent application for such Project Invention. The Party which has or receives title to such Project Invention will, in other countries, file, cause to be filed, or provide the other Party with the opportunity to file on behalf of the Party holding title, or its Contractors, as appropriate, Patent applications covering that Project Invention. If a Party having filed or caused to be filed a Patent application decides to stop prosecution of the application, that Party shall notify the other Party of that decision and permit the other Party to continue the prosecution.

9.7.2. The other Party shall be furnished with copies of Patent applications filed and Patents granted with regard to Project Inventions.

9.7.3. The other Party shall acquire a non-exclusive, irrevocable, royalty-free license to practice or have practiced, by or on behalf of the Party, throughout the world for Project Purposes, any Project Invention.

9.7.4. Patent applications which contain Classified Information, to be filed under this Agreement, shall be protected and safeguarded in accordance with the requirements contained in the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, done in Paris on 21 September 1960, and its Implementing Procedures.

9.7.5. Each Party shall notify the other Party of any Patent infringement Claims made in its territory arising in the course of work performed under the Project. Insofar as possible, the other Party shall provide information available to it that may assist in defending the claim. Each Party shall be responsible for handling all Patent infringement claims made in its territory, and shall consult with the other Party during the handling, and prior to any settlement, of such claims. The Parties shall share the costs of resolving Patent infringement claims in proportion to their contributions to the Project. The Parties will, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the Project of any invention covered by a Patent issued by their respective countries.

ARTICLE X

CONTROLLED UNCLASSIFIED INFORMATION

10.1. Except as otherwise provided in this Agreement or as authorized in writing by the providing Party, Controlled Unclassified Information provided or generated pursuant to this Agreement shall be controlled as follows:

10.1.1. Such information shall be used only for the purposes authorized for use of Project Information as specified in Article IX (Disclosure and Use of Project Information).

10.1.2. Access to such information shall be limited to personnel whose access is necessary for the permitted use under subparagraph 10.1.1. And shall be subject to the provisions of Article XIII (Third Party Sales and Transfers and Alternative Uses).

10.1.3. Each Party shall take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 10.1.2. unless the providing Party consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification shall be given to the providing Party.

10.2. To assist in providing the appropriate controls, the providing Party shall ensure that Controlled Unclassified Information is appropriately marked. The Parties shall decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings shall be defined in the Project Security Instruction.

10.3. Controlled Unclassified Information provided or generated pursuant to this Agreement shall be handled in a manner that ensures control as provided for in paragraph 10.1.

10.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Parties shall ensure the Contractors are legally bound to control such information in accordance with the provisions of this Article.

ARTICLE XI

VISITS TO ESTABLISHMENTS

11.1. Each Party shall permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Party or by employees of the other Party's Contractor(s), provided that the visit is authorized by both Parties and the employees have any necessary and appropriate security clearances and a need-to-know.

11.2. All visiting personnel shall be required to comply with security regulations of the host Party. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this Agreement.

11.3. Requests for visits by personnel of one Party to a facility of the other Party shall be coordinated through official channels, and shall conform to the established visit procedures of the host country. Requests for visits shall bear the name of the Project.

11.4. Lists of personnel of each Party required visiting, on a continuing basis, facilities of the other Party shall be submitted through official channels in accordance with Recurring International Visit Procedures.

ARTICLE XII

SECURITY

12.1. All Classified Information or material provided or generated pursuant to this Agreement shall be stored, handled, transmitted, and safeguarded in accordance with the General Security Agreement between Italy and the United States of America, of 4 August 1964, amended 2 September 1982, and including the Industrial Security Annex thereto, of 27 November 1985, amended 27 January 1988.

12.2. Classified Information and material shall be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such information and material shall bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this Agreement.

12.3. Each Party shall take all lawful steps available to it to ensure that information provided or generated pursuant to this Agreement is protected from further disclosure, except as permitted by paragraphs 12.3.1 and 12.8. Accordingly, each Party shall ensure that:

12.3.1. The recipient shall not release the Classified Information to any government, national organization, or other entity of a Third Party except as permitted under the procedures described in Article XIII (Third Party Sales and Transfers and Alternative Uses).

12.3.2. The recipient shall not use the Classified Information for other than the purposes provided for in this Agreement.

12.3.3. The recipient shall comply with any distribution and access restrictions on information that is provided under this Agreement.

12.4. The Parties shall investigate all cases in which it is known or where there are grounds for suspecting that Classified Information or material provided or generated pursuant to this Agreement has been lost or disclosed to unauthorized persons. Each Party also shall promptly and fully inform the other Party of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

12.5. The JSF/ID PM shall prepare a Project Security Instruction and a Classification Guide for the Project. The Project Security Instruction and the Classification Guide shall describe the methods by which Project Information and material shall be classified, marked, used, transmitted, and safeguarded. The Instruction and Guide shall be developed by the JSF/ID PM within three months after this Agreement enters effect. They shall be reviewed and forwarded to the appropriate DSAs and shall be applicable to all government and Contractor personnel

participating in the Project. The Classification Guide shall be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The Project Security Instruction and the Classification Guide shall be approved by the appropriate DSAs prior to the transfer of any Classified Information or Controlled Unclassified Information.

12.6. The DSA of the country which awards a Contract requiring access to Classified Information shall assume responsibility for administering within its territory security measures for the protection of that Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or subcontractors of any Classified Information received under this MOA, the DSAs shall:

12.6.1. Ensure that such Contractor, prospective Contractor, or subcontractors and their facilities have the capability to protect the information adequately.

12.6.2. Grant a security clearance to the facilities, if appropriate.

12.6.3. Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate.

12.6.4. Ensure that all persons having access to the information are informed of their responsibilities to protect the information in accordance with national security laws and regulations, and the provisions of this MOA.

12.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

12.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the MOA.

12.7. Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this Agreement only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party shall not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other Party shall be consulted for approval prior to permitting such access.

12.8. For any facility wherein Classified Information or material is to be used, the responsible Party or Contractor shall approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information or material pertaining to this Agreement. These officials shall be responsible for limiting access to Classified Information or material involved in this Agreement to those persons who have been properly approved for access and have a need-to-know.

12.9. Each Party shall ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the information in order to participate in the Project.

12.10. Information or material provided or generated pursuant to this Agreement may be classified as high as Secret. The existence of this Agreement is Unclassified and the contents are Unclassified.